

Dec 17, 2004

Response To Comments: 15-Day Public Comment Period Ending October 15, 2004, For The Revised Legislative Report Regarding The Status Of, And Recommendations Pertaining To The Minimum Content Requirements Of, The Plastic Trash Bag Law (August 2004)

INTRODUCTION

Board staff wishes to thank all stakeholders who participated in October 27, 2004, workshop to solicit possible alternative recommendations to include in the Plastic Trash Bag Legislative Report (Report). As a result of that input staff has revised the Report's recommendation to reflect a more voluntary/collaborative approach to managing plastic film in California. Additionally, the Report has been revised to delete the recommendation for implementation of an expanded minimum content certification program for film plastic. The Report also recommends the suspension of Plastic Trash Bag law for a period of up to four years, and its repeal with the successful achievement of a voluntary approach to manage film plastics, or its replacement with the mil fee if that effort should fail. This document summarizes staff's response to the alternative recommendations proposed at the October 27th workshop, and to written previously submitted during the 15 day comment period ending October 15, 2004 .

PLASTIC TRASH BAG LEGISLATIVE REPORT WORKSHOP

Comment: A workshop was held on Oct 27, 2004 to solicit input from industry and environmental representatives regarding the Report's recommendations. Industry stakeholders proposed a set of alternative recommendations, based on a voluntary approach, for possible inclusion in the draft Report. These recommendations included:

- Focus on collaborative efforts to increase the collection of film plastics for open loop recycling options, such as the plastic lumber market, and solicit input from industry regarding what other new and expanded 'closed loop' recycling opportunities may exist;
- Further develop and promote the use of QA/QC guidelines to expand end use applications for high quality post-consumer material (PCM).
- Support ongoing voluntary industry efforts to implement producer responsibility policies and programs.
- Allow industry as a whole to take responsibility for collecting, recycling, and reprocessing of plastic film discards.
- Support ongoing and proposed industry education and outreach efforts to increase plastic film recycling and prevent litter.
- Prioritize the types of plastic film to focus collection and recycling efforts on based on the largest disposed types as reported in the results of the Board's 2003 Waste Characterization Study (WCS).
- Support the development of conversion technologies to divert low value, mixed plastic film for which there are no other viable markets.

In addition to the industry stakeholder recommendations, a key environmental stakeholder recommended that the Board, if it adopts a policy to allow industry to pursue voluntary solutions to film plastic management, also set measurable objectives to be achieved by specified dates in order to evaluate the success of the voluntary approach. Further, if the results fail to meet specified objectives, the Board should then implement the regulatory approach proposed by staff.

Response: After evaluating stakeholder comments provided in writing through the 15 day comment period and from the workshop; taking into account the technical and administrative challenges of implementing these recommendations; and considering the fact that industry stakeholders are willing to continue to work with staff to increase film collection and recycling, staff is now proposing to drop its original recommendations to expand the minimum content certification program, and assess a mil fee on non-compliant manufacturers or wholesalers. Instead staff is now recommending that the Board lead a collaborative process to develop and implement a Memorandum of Understanding (MOU) with key industry, environmental, and local government stakeholders to meet agreed upon diversion goals for film plastic.

Board staff has revised the Report to recommend that the Legislature suspend the existing trash bag law for a period of up to five years in order to give the Board sufficient time to lead a collaborative process with stakeholder groups to develop, implement and evaluate the success of the MOU.

Specifically, Board staff is proposing that it lead an open process for developing one or more MOUs that are representative of the key industry, environmental and local government stakeholders necessary for implementing the actions in the MOUs to effectively divert film plastic from disposal. The MOUs would incorporate the action items identified in the PWP recommendations adopted by the Board at its June, 2003, meeting, and by stakeholder at numerous interested parties meetings and workshops conducted by the Board regarding managing plastic discards. The MOUs would identify the action items, dates, resources, and measurable results to be achieved.

Board staff is also proposing that the recommendations include a default to a regulatory approach should the Board fail to successfully negotiate the necessary MOUs that it believes are required for increasing plastic film diversion in California. Also, if one or more MOUs fail to achieve specified diversion goals, those industry sectors covered under those MOUs would then be subject to the mil fee. Under this approach staff would be required to report to the Board at two decision points regarding whether it will be necessary to initiate a mil fee:

1. Success in negotiating the MOU by a Board adopted deadline.
2. Success in achieving the diversion goals specified in the MOU.

Staff proposed that the first decision point be reached within eighteen months of the legislation suspending the law, 20for adopting the MOU negotiated with stakeholders. The second decision point would be achievement of the specified diversion goals during the two year period after adoption of the MOUs. If the diversion goals were not met, the default regulatory approach would be implemented the following year.

If the mil fee becomes necessary, Board staff is recommending that it be imposed on the plastic film products covered under a particular MOU that is designed to address the recycling of plastic film from one of the film categories identified in the 2003 Waste Characterization Study. The fee is to be assessed on manufacturers, distributors and/or wholesalers of plastic film products at the first point of sale in California. The money raised through the mil fee will be used to fund collection and recycling infrastructure improvements to increase plastic film diversion, and also for market development and research for increasing the use of PCM as recycled content manufacturing feedstock. Board staff is not recommending that a minimum content requirement be maintained in association with the mil fee. Board staff is further recommending that the PTB law be repealed effective July 1, 2009.

GENERAL WRITTEN COMMENTS

Comment 1: It is difficult to use post-consumer material in certain film plastic applications and/or products without compromising performance such as strength, resistance to slip, clarity, odor, contamination, color, and general quality of PCR etc. Given the demanding requirements of the film extrusion process and of the end uses of the proposed applications, will not the factors which limit the use of PCR in trash bags also limit its usage in other film products? How will the Board answer the technical questions regarding the feasibility of these recommendations before asking the Legislature to enact them?

Response 1: Board staff recognizes that there are challenges associated with the use of PCM in some film products. Therefore, the Report has been revised to recommend the negotiation of MOUs with key industry, environmental and local government stakeholders to increase the diversion of plastic from California landfills. Through these MOUs the Board would lead efforts to increase the collection, processing and use of PCM in a variety of recycling opportunities. Staff will seek input from stakeholders to for targeting products that are best suited for PCM. Staff will also work with stakeholders to improve the quality of PCM to allow its use in a broader range of products.

Reference: 2, 3, 4, 6, 7, 10, 12, 15, 18, 19 and 21

Comment 2: Does the Board know which products can actually be made with post-consumer material? Will the factors that limit the use of post-consumer material in trash bags, also limit post-consumer material usage in other products?

Response 2: Board staff will work with stakeholders to develop a comprehensive list of products that could incorporate PCM. Staff will also work with stakeholders when developing the MOUs to set appropriate diversion goals for film plastic diversion.

Reference: 1, 2, 3, 6, 7, 10, 12, 15 and 19

Comment 3: The draft report selectively cites the Plastic White Paper, but fails to remind readers that the White Paper concluded that the trash bag law was obsolete and has a minimal impact on diversion.

Response 3: The White Paper concluded that California needs to develop a comprehensive program for the management of plastic products. Board staff has revised the Report to reflect a product stewardship approach through negotiation of MOUs with key stakeholders to implement diversion programs for plastic film products.

Reference: 6 and 16

Comment 4 Calculations are inconsistent and sources need to be identified for several tables and text in the report. These figures need to be reconciled and the source of each figure identified. Regardless of which figure correctly states the amount of PCM used in regulated bags, the report should make clear whether that amount includes the 20% credit granted for PCM sourced in California. The claim that 20,000 tons of film plastic is being recycled is undocumented.

Response 4: The 8,400 ton figure shown on pages 4 and 6 is a rounding of the 8,383 tons shown on page 20. This is the amount of post-consumer material that the reporting plastic trash bag manufacturers certified as using for compliance purposes in 2003. The 7,529 tons indicated on page 11 is the actual tonnage used, with out regarding to the “20 percent credit” given for the use of California post-consumer material, in regulated trash bags.

The 11,000-ton value shown on page 12 is the amount of post-consumer material that the manufacturers reported as have acquired during 2003 for the manufacture of regulated trash bags. There are several manufacturers who acquired significant quantities of post-consumer material that were not used during 2003.

The 20,000 tons being recycled was a staff estimate. Staff has deleted this estimate because it was based on old data from the mid-1990s. The trash bag certification filings document 5,000 tons being recycled into trash bags. Those same manufacturers actually purchased ____ tons. Staff knows that some undetermined amount was recycled through the composite/plastic lumber industry.

Staff has revised the Report to reconcile these numbers.

Reference: 6

Comment 5: There is a contradiction by proposing eliminating certification but retaining content requirements. The report should flatly recommend the repeal of the Plastic Trash Bag Law, as recommended by the Plastics White Paper.

Response 5: The revised report is now recommending the suspension of the Plastic Trash Bag law pending the development and implementation of MOUs with stakeholders to divert plastic

film, and the repeal of the law if negotiated diversion goals are met. The Report also recommends repealing the law if the Board is unsuccessful in negotiating MOUs, or if specified plastic diversion goals are not met.

Reference: 6 and 16

Comment 6: We appreciate all the time and energy that CIWMB has put into the question of finding the most effective means of increasing plastic film recycling and the diversion of these product from landfills as long as possible within their lifespan. However, we do not agree that a mil tax is a good way to do this. How will the new tax be applied to the sales of plastic film or the sales of products made from plastic film or both and where will this be assessed, at the retail level or at the manufacturing level? Additionally, the Report does not define “film plastic products.”

Response 6: In the event that a mil fee is enacted, the mil fee would be collected from manufacturers, distributors or wholesalers shipping and/or selling a plastic film product in California. Board staff is proposing to negotiate MOUs with the industry sectors constituting the largest categories of disposed film in California. Based on the 2003 Waste Characterization Study results, the largest categories are:

Film Type	Est. Pct.	Est. Tons
Plastic Trash Bags	1.0%	390,000
Plastic Grocery and other Merchandise Bags (Shrink wrap; bubble wrap; mattress bags)	0.4%	147,038
Non-bag Commercial/Industrial Packaging film	0.7%	290,331
Film Products (ag film; construction film)	0.2%	93,073
Other film (sandwich, produce bags; food wrappers; mailing pouches; ect.)	2.1%	826,757
Total	4.4%	1,747,659

Staff proposes that the MOUs be negotiated based on these sectors, and that the mil fee be imposed on manufacturers, distributors and wholesalers shipping or selling film products from these sectors into California. By using this approach companies included in a successful MOU that meets its diversion goals would not be subject to the fee for the failure of an MOU in another industry segment.

Reference: 1, 2, 3, 5, 7, 13, 14, 15, 16, 17 and 18

Comment 7: During the White Paper process, the CIWMB acknowledged that the trash bag program does not work. We strongly urge the Board to listen to manufacturers of the newly targeted film products before replacing one unworkable program with an even larger burden on the state and plastic manufactures. Before the Board tries to impose content requirements on even more products that find it difficult to use PCM, and before it imposes a fee on those

products, we believe the Board should work forcefully with all affected parties to identify cooperative steps that can be taken to increase collection and re-use of film plastic products. Initial responses from manufacturer members (of ag film, stretch wrap, construction film, tarps, bubble wrap and mattress bags) indicate that several of these bag/film applications actually preclude the use of post-consumer content.

Response 7: Board staff has revised the Report's recommendations to give industry the opportunity to participate in the development of MOUs to identify actions to increase film plastic diversion through open loop recycling opportunities. Should industry not successfully help the Board to significantly increase plastic film diversion through this collaborative approach, the Report then recommends the implementation of a mil fee to fund the necessary projects and programs to accomplish this.

Reference: 1, 2, 5, 6, 7, 10, 12, 15, 18 and 21

Comment 8: Implementation of Fees or Minimum Content Requirements will make California manufacturers, distributors and users of film plastics uncompetitive relative to their out-of-state counterparts.

Response 8: The mil fee would be assessed at the point of first sale in California. This will allow the Board to impose the mil fee on wholesalers as well as distributors and manufacturers. By assessing the mil fee on wholesalers the Board can help to maintain a level playing field by ensuring that the mil fee is assessed on any film product that may be imported into California. Furthermore, the Board can create jobs in the State by supporting new and expanded plastic recycling collection and processing infrastructure, and providing low cost recycled content manufacturing feedstock to product manufacturers.

Reference: 3, 4, 12 and 21

Comment 9: We support efforts to implement a fair and reasonable mil fee to fund the necessary improvements to the plastic film collection and processing infrastructure in Ca. We support the mil fee to fund the RMDZ loan program. The key to diverting plastic wastes from the landfills is to create markets that make plastic more valuable. Supplementary funding, such as would be provided by a mil fee, is essential to substantially improve collection and processing infrastructure. We believe one of the primary objectives of the mil fee would be to provide funding for processors to upgrade processing and recycling equipment.

Response 9: Comment noted.

Reference: 8, 9, 11 and 18

Comment 10: The marketplace, either through manufacturing of domestic products or the export market has enough pull/demand to lead to increases in supply of diverted materials through

improvement of collection and processing infrastructures. We feel the marketplace in conjunction with public education and outreach will contribute to increased film recycling. The application of additional regulations will only result in higher costs for manufacturers that must be passed on, as well as in new taxation for consumers-effectively creating a two-tier tax.

Response 10: The Report has been revised to adopt such an approach, and only recommends that a mil fee be assessed if this type of approach fails to significantly increase plastic film diversion in California.

Reference: 14, 17

Comment 11: Another aspect that concerns us is the use of biodegradable and the effect it would have on plastic lumber products and other manufacturers and reproducers. As far as we are concerned, biodegradable is just another contaminant like cross-linked film.

Response 11: The revised report no longer recommends an expanded certification program that includes a biodegradable compliance option in lieu of meeting a minimum content requirement. Instead the report now recommends the development of MOUs to focus on the increased collection of plastic film for diversion through open loop recycling opportunities. However, even with this approach Board staff and stakeholders will need to examine appropriate uses for biodegradable plastic products and ensure that they do not become a contamination problem for new or existing recycling options.

Reference: 17

Comment 12: Plastic lumber is the ideal answer that has been borne out of free-market forces; and after all the testimony and fact-finding that has gone into this issue, I don't understand why the staff is still emphasizing waste-management solutions that involve recycling film back into film. The funding that is available would be far more effective if it was put toward efforts to collect film after use to make it easier for plastic lumber manufacturers to obtain the smaller volumes represented by individual commercial users.

Response 12: Board staff will work with stakeholders to develop and implement diversion programs and projects to recover plastic film for open loop recycling opportunities. However, Board staff also believes that where appropriate, film to film recycling opportunities should be promoted as well.

Reference: 14

Comment 13: The United States Department of Transportation regulations preclude the use of post-consumer material in packaging materials such as stretch wrap. The failure of film plastic during transportation of hazardous materials such as paints, coatings, sealants and related products could result in significant public health and environmental problems.

Response 13: Board staff believes that the Association may have misinterpreted the United States Department of Transportation requirements for the shipment of hazardous materials.

Staff recognizes the important role stretch wrap plays in the protection and containment of potential hazardous materials that are being transported within the United States. California's Rigid Plastic Packaging Container (RPPC) law provides an exemption for RPPCs that hold products whose packaging is specially regulated under certain sections of 49 CFR. The Board has granted exemptions for many products manufactured by the Association's membership. Staff is seeking clarification from DOT regarding whether or not the post-consumer material restrictions in applicable sections of 49 CFR apply to stretch wrap used to secure and protect the product containers during shipment.

Reference: 13

REFERENCES (Reference List Corrected 12-30-04)

1. California Grape & Tree Fruit League
2. California Film Extruders & Converters Association
3. Pactiv Corporation
4. California Cotton Ginners and Growers Associations
5. California Association of Nurseries and Garden Centers
6. Poly-America, Inc.
7. Western Home Furnishings Association
8. San Joaquin County Public Works
9. Mojave Desert & Mountain Recycling
10. Society of the Plastics Industry (SPI)
11. City of Livermore
12. Allied Plastics, Inc.
- 13..National Paint and Coatings Association
14. Trans Western Polymers, Inc
15. California Bag and Film Alliance (CBFA)
16. American Chemistry Council
17. Marathon Recovery
18. Waste Management, Governmental Affairs
19. Hilex Poly Company
20. BPI
21. Elkay Plastics Co., Inc